

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 10-N-01788-RAP
)
CARLOS EDUARDO CASTANEDA,)
) **DECISION & ORDER OF**
Member No. 140786,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT¹**
)
A Member of the State Bar.)

Introduction

In this rule 9.20 proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges that respondent **CARLOS EDUARDO CASTANEDA**² willfully failed to comply with California Rules of Court, rule 9.20 (rule 9.20) as ordered by the Supreme Court on November 10, 2009. Specifically, the State Bar charges that respondent failed to file a compliance affidavit with the State Bar Court as required under rule 9.20(c).³

¹ The Rules of Procedure of the State Bar of California were amended effective January 1, 2011. Nonetheless, the court orders the application of the former Rules of Procedure of the State Bar based on a determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

² Respondent was admitted to the practice of law in this state on June 7, 1989, and has been a member of the State Bar of California since that time. He has three prior records of discipline.

³ Rule 9.20(c) provides: “Within such time as the order may prescribe after the effective date of the member’s disbarment, suspension or resignation, the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully [performed the acts specified

The State Bar was represented by Deputy Trial Counsel Jessica A. Lienau (DTC Lienau). Even though respondent was clearly given more than adequate notice (see *post*), respondent did not appear in this proceeding either in person or through an attorney.

For the reasons set forth *post*, the court finds respondent culpable of the charged misconduct and concludes that the appropriate level of discipline is disbarment. Accordingly, the court will recommend that respondent be disbarred. Moreover, in light of its disbarment recommendation, the court must order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding. (Bus. & Prof. Code, § 6007, subd. (c)(4).)⁴

Significant Procedural History

On December 16, 2010, the State Bar filed a notice of disciplinary charges (NDC) against respondent in case numbers 10-N-01788 and 10-O-06121 (consolidated) and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (official address).⁵ On December 16, 2010, the State Bar also sent a courtesy copy of the NDC to respondent at his official address by first class mail, regular delivery.

Neither the service copy of NDC nor the courtesy copy of the NDC was returned to the State Bar as undeliverable or otherwise. In fact, the United States Postal Service (Postal Service) sent the State Bar a delivery receipt (i.e., a green card) for the service copy of the NDC. That

in rule 9.20(a)]. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.”

⁴ Unless otherwise noted, all further statutory references are to the Business and Professions Code.

⁵ Service of the NDC on respondent was deemed complete when mailed regardless of whether he received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

receipt establishes that the service copy of the NDC was actually delivered to and “signed for” by Carla Canizalez at respondent’s official address on December 17, 2010.

Respondent’s response to the NDC was due no later than January 10, 2011. (Rules Proc. of State Bar, former rules 103(a); 63 [computation of time]; see also Code Civ. Proc., § 1013(a).) Respondent, however, failed to file a response to the NDC. Thus, on January 26, 2011, the State Bar filed a motion for the entry of respondent’s default.

Attached to the State Bar's January 26, 2011 motion for entry of default, is a declaration from DTC Lienau. That declaration establishes that, in addition to serving a copy of the NDC on respondent by certified mail, the State Bar commendably took a number of additional steps in an attempt to communicate with respondent to insure that he has actual knowledge of this disciplinary proceeding. Those additional steps included State Bar Investigator Thomas Mills locating an additional address for respondent on South Evans Street in San Diego by performing a “people locator search” on LexisNexis. Those steps also included DTC Lienau obtaining two additional telephone numbers for respondent and trying to contact respondent at those numbers, and DTC Lienau mailing a courtesy copy of the NDC to respondent at the address on South Evans Street that Investigator Mills obtained for respondent off of Lexis. Despite all of the State Bar's efforts to communicate with him, respondent never filed a response to the State Bar’s motion for entry of default or to the NDC.

Because all of the statutory and rule prerequisites were met and because respondent was given more than adequate notice of this proceeding (U.S. Const., 14th Amend.; *Jones v. Flowers*, *supra*, 547 U.S. at pp. 224-227, 234), on February 11, 2011, the court filed an order entering respondent's default and, in accordance with section 6007, subdivision (e)(1), ordering that respondent be involuntarily enrolled as an inactive member of the State Bar effective on

February 14, 2011.⁶ Also, on February 14, 2011, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline.

Initially, the court took the case under submission for decision without a hearing on March 3, 2011. However, in an order filed on May 13, 2011, the court vacated that submission; severed case number 10-O-06121-RAP (which is an unrelated original disciplinary proceeding) from case number 10-N-01788-RAP (which is a rule 9.20 proceeding); and then resubmitted case number 10-N-01788-RAP for decision without a hearing.

Findings of Fact and Conclusions of Law

Under section 6088 and former rules 200(d)(1)(A) and 201(c) of the State Bar Rules of Procedure, upon the entry of respondent's default, the factual allegations set forth in the NDC were deemed admitted and no further proof was required to establish the truth of those facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Those factual findings establish the following disciplinary violation by clear and convincing evidence.

Findings of Fact

On November 10, 2009, the Supreme Court filed an order in case number S176298 (State Bar Court case numbers 07-O-10912, 08-O-012182, 08-O-14340, and 09-O-10215 (consolidated)), styled *In re Carlos Eduardo Castaneda (Castaneda III)*, in which the Supreme Court placed respondent on two years' stayed suspension and three years' probation on conditions, including a nine-month suspension.

In its November 10, 2009 order in *Castaneda III*, the Supreme Court also ordered respondent to comply with California Rules of Court, rule 9.20 and to perform the acts specified

⁶ Unless respondent's default is set aside, respondent will remain on involuntary inactive enrollment until the effective date of the Supreme Court order in this proceeding. (§ 6007, subd. (e)(2).) Of course, inactive members of the State Bar of California, like respondent, cannot lawfully practice law. (§ 6126, subd. (b); see also § 6125.)

in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of that order.

After the Supreme Court filed its November 10, 2009 order in *Castaneda III*, the Clerk of the Supreme Court promptly mailed a copy of that order to respondent at his official address. Shortly thereafter, respondent actually received that copy of the Supreme Court's order.

The Supreme Court's November 10, 2009 order became effective on December 10, 2009 (Cal. Rules of Court, rule 9.18(a)) and has continuously remained in effect since that time. Thus, respondent was required to perform the acts specified in rule 9.20(a) no later than January 9, 2010 (30 days after December 10, 2009), and to file the affidavit required in rule 9.20(c) with the State Bar Court Clerk no later than January 19, 2010 (40 days after December 10, 2009).

As of December 16, 2010, the date on which the State Bar filed the NDC in this proceeding, respondent had not filed a rule 9.20(c) compliance affidavit (i.e., an affidavit stating that he had performed the acts specified in rule 9.20(a) and setting forth an address for future communications). Nor has respondent filed such a compliance affidavit with this court since that time.

Conclusions of Law

The record clearly establishes that respondent willfully violated rule 9.20(c) when he failed to file a compliance affidavit with the Clerk of the State Bar Court no later than January 19, 2010. Respondent was required to file a rule 9.20(c) compliance affidavit even if he had no law practice, clients, or pending cases on November 10, 2009, i.e., the date on which the Supreme Court filed its order directing respondent to comply with rule 9.20). (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [applying former rule 955 of the California Rules of Court (now rule 9.20)].)

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Aggravation⁷

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Prior Record of Discipline

Respondent has three prior records of discipline. (Std. 1.2(b)(i).)

Castaneda I

On July 28, 1999, in case numbers 96-O-08699 and 96-O-08708, the State Bar Court approved a stipulation between respondent and the State Bar and imposed a public reproof with conditions attached for one year (*Castaneda I*). That reproof became effective on August 12, 1999.

In *Castaneda I*, respondent stipulated that he was culpable on the following two counts of misconduct: (1) failure to perform legal services with competence (Rules Prof. Conduct, rule 3-110(A)); and (2) misrepresentation to a client constituting moral turpitude (§ 6106).

Castaneda II

On July 26, 2001, in Supreme Court case number S097702 (State Bar Court case numbers 99-O-11745 and 00-H-13034, the Supreme Court placed respondent on six months' stayed suspension and three years' probation on conditions, including a 30-day suspension.

In *Castaneda II*, respondent stipulated that he was culpable on each of the following six counts of misconduct: (1) failure to perform legal services with competence (Rules of Prof. Conduct, rule 3-110(A)); (2) failure to return a client file (Rules Prof. Conduct, rule 3-700(D)(1)); (3) failure to respond to client inquiries (§ 6068, subd. (m)); (4) failure to cooperate in a State Bar disciplinary investigation (§ 6068, subd. (i)); (5) failure to obey a court

⁷ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

order (§ 6103); and (6) failure to comply with reproof conditions (Rules Prof. Conduct, rule 1-110).

Castaneda III

As noted *ante*, on November 10, 2009, the Supreme Court filed an order in *Castaneda III* in which it placed respondent on two years' stayed suspension, three years' probation, and nine months' suspension.

In *Castaneda III*, respondent stipulated that he was culpable on the following two counts of misconduct: (1) improper withdrawal from employment (Rules Prof. Conduct, rule 3-700(A)(2)); and (2) failure to perform legal services with competence (Rules Prof. Conduct, rule 3-110(A)).

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e); *In re Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.) There is no evidence of any mitigating circumstance. Nor is there any mitigation otherwise apparent in the record.

Discussion

In determining the appropriate level of discipline, the court ordinarily looks to the standards first. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and to case law second (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) However, the standards do not address the appropriate level of discipline in rule 9.20 proceedings. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does.

Under rule 9.20(d), an attorney's willful failure to comply with the provisions of rule 9.20 “is a cause for disbarment or suspension and for revocation of any pending probation.” Even though rule 9.20(d) provides for the sanctions of suspension and revocation of probation, case law makes clear that, in the absence of compelling mitigating circumstances, disbarment is the ordinary and appropriate level of discipline for violating a provision of rule 9.20. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited.)

Among other things, a suspended attorney's timely compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, co counsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's suspension and consequent disqualification to act as an attorney. When the attorney fails to file a rule 9.20(c) compliance affidavit, this court and the Supreme Court cannot determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) ensures that this court and the Supreme Court are apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

Respondent's unexplained failure to file a rule 9.20(c) declaration of compliance strongly suggests a conscious disregard for this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California. Moreover, there is no mitigation, much less compelling mitigation, that would warrant a departure from the ordinary and most consistently imposed sanction of disbarment under rule 9.20(d).⁸

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⁸ Even though not directly applicable to this rule 9.20 proceeding, the court notes that a disbarment recommendation in this proceeding is consistent with standard 1.7(b), which provides for disbarment when an attorney has been found culpable of misconduct and has two prior records of discipline unless the most compelling mitigating circumstances clearly predominate.

Recommendations

The court recommends that respondent CARLOS EDUARDO CASTANEDA, State Bar number 140786, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that CARLOS EDUARDO CASTANEDA be ordered to again comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that CARLOS EDUARDO CASTANEDA be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)(1)).

Dated: July 18, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court